

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: BENNY VICENS RODRIGUEZ,  
CYNTHIA NADINE RODRIGUEZ,

BKY. No.: 02-94443  
Chapter 13

Debtors.

**NOTICE OF HEARING AND**  
**MOTION FOR RELIEF**  
**FROM AUTOMATIC STAY**

-----  
TO: BENNY VICENS RODRIGUEZ, CYNTHIA NADINE RODRIGUEZ  
AND THEIR ATTORNEY, WAYNE G. NELSON, ATTORNEY AT  
LAW, 5500 WAYZATA BLVD., RM. 1025, MINNEAPOLIS, MN  
55416.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home  
Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for  
the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on September 20, 2004 at  
10:30 A.M. in Courtroom No. 228B, at the United States Courthouse, at 316 North  
Robert Street, in St. Paul, Minnesota, or as soon as counsel may be heard before The  
Honorable Gregory F. Kishel, Chief Judge of the United States Bankruptcy Court.

3. Any response to this motion must be filed and delivered not later  
September 15, 2004, which is three days before the time set for the hearing (excluding  
Saturdays, Sundays and holidays), or filed and served by mail not later than September 9,  
2004, which is seven days before the time set for the hearing (excluding Saturdays,  
Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS  
TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A  
HEARING.

## **MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on December 29, 2002. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtors that is subject to a perfected security interest in favor of the Movant as shown by the term of the mortgage, a copy of which is attached hereto as Exhibit A.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Chapter 13 Plan confirmed on February 27, 2003 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

b) To date, the Debtors are in default on said payments from July 1, 2004 to date in the amount of \$691.12 per month, plus post-petition late charges and inspection fees.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells

Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: August 31, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The St. Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262/231605  
(D1720)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

# VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: August 31, 2004.

WELLS FARGO BANK, N.A.

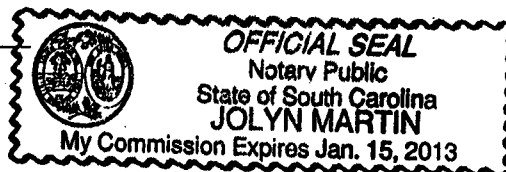
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

31 day of August, 2004

J. Martin  
Notary Public



OFFICE OF COUNTY RECORDER  
STATE OF MINNESOTA  
COUNTY OF PINE

405573

This is to certify that this instrument was filed in this  
office on the 28th day of January  
2002 at 10 o'clock AM,  
and was recorded as  
Document # 405573

No. 23295  
Registration Tax 208.38  
Paid 28 Jan 20 02  
Kimberly Schultz County Treasurer  
Countersigned and payment received.  
Wayne St. Olander County Auditor  
By: Sam Lawrence

County Recorder  
By: Kimberly Schultz Dep.  
Rec'd. 33 Ret. late WC Rec'd.

[Space Above This Line For Recording Data]

MORTGAGE

Return To:  
WELLS FARGO HOME MORTGAGE, INC.  
3601 MINNESOTA DR. SUITE 200  
BLOOMINGTON, MN 55435



0101265230  
ATI Title Company  
253- University Avenue West  
St. Paul, Minnesota 55114-1052

NOTICE: THIS LOAN IS NOT ASSUMABLE  
WITHOUT THE APPROVAL OF THE DEPARTMENT  
OF VETERANS AFFAIRS OR ITS AUTHORIZED  
AGENT.

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **NOVEMBER 02, 2001** together with all Riders to this document.

9467479  
353560552280

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

UG(MN) (0008)

Page 1 of 15

Initials: BLR

VMP MORTGAGE FORMS - (800) 521-7291



405573

(B) "Borrower" is **BENNY V. RODRIGUEZ AND CYNTHIA N. RODRIGUEZ, HUSBAND AND WIFE**

Borrower is the mortgagor under this Security Instrument.  
(C) "Lender" is **WELLS FARGO HOME MORTGAGE, INC.**

Lender is a **CORPORATION**  
organized and existing under the laws of **THE STATE OF CALIFORNIA**  
Lender's address is **P.O. BOX 5137, DES MOINES, IA 503065137**

Lender is the mortgagee under this Security Instrument.  
(D) "Note" means the promissory note signed by Borrower and dated **NOVEMBER 02, 2001**  
The Note states that Borrower owes Lender **NINETY THOUSAND SIX HUNDRED AND 00/100**

Dollars

(U.S. \$\*\*\*\*\*90,600.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **NOVEMBER 01, 2031**

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider ☐ Condominium Rider

☐ Second Home Rider

405573

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

# TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY PINE [Type of Recording Jurisdiction] of PINE [Name of Recording Jurisdiction]:

Southwest Quarter of Northwest Quarter (SW 1/4 of N/W 1/4), Section Thirteen (13), Township Forty-One (41), Range Twenty-One (21).

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 5137, DES MOINES, IA 503065137

Parcel ID Number: 150123000  
RT1 BOX 321  
HINCKLEY  
("Property Address"):

which currently has the address of  
(Street)  
[City], Minnesota 55037 (Zip Code)

405573

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

Benny V. Rodriguez (Seal)  
BENNY V. RODRIGUEZ -Borrower

Cynthia N. Rodriguez (Seal)  
CYNTHIA N. RODRIGUEZ -Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

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Chapter 13

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**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )

COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtors.

2. That pursuant to the Chapter 13 Plan confirmed on February 27, 2003 the Debtors were to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtors are in default on said payments from July 1, 2004 to date in the amount of \$691.12 per month, plus post-petition late charges.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.

WELLS FARGO BANK, N.A.

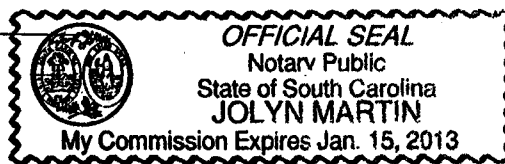
Dated: August 31, 2004

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

31 day of August, 20 04

Notary J. Martin





UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

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In re: BENNY VICENS RODRIGUEZ,  
CYNTHIA NADINE RODRIGUEZ,

BKY. No.: 02-94443  
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Debtors.

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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**MEMORANDUM OF LAW**

I. Factual Background

The Debtors filed their petition herein on December 29, 2002 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Pine County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as follows:

Southwest Quarter of Northwest Quarter (SW 14 of NW ¼),  
Section Thirteen (13), Township Forty-One (41), Range Twenty-One (21).

The amount due under said mortgage loan was approximately \$91,000.00. Pursuant to the Chapter 13 Plan confirmed on February 27, 2003 the Debtors were to make all current monthly payments due on said mortgage outside of the plan. The Debtors are in default on said payments from July 1, 2004 to date in the amount of \$691.12 per month, plus post-petition late charges and inspection fees.

## II. Argument

### GOOD CAUSE EXISTS TO GRANT THE MOVANT RELIEF FROM THE STAY FOR CAUSE.

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtors have failed to meet their contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrcty. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrcty. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrcty. S.C.N.Y. 1986).

In view of the Debtors’ inability to make payments toward their loan obligation, the Movant's interest in the real property of the Debtors is not adequately protected. A continuing default by the Debtors will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtors is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtors. The Debtors’ offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

## CONCLUSION

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: August 31, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Saint Paul Building  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262  
(D1720)

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The St. Paul Building, 6 West 5th St., St. Paul, Minnesota 55102 declares that on September 1, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Jasmine Z. Keller  
Trustee  
12 S. 6<sup>th</sup> St., Ste. 310  
Minneapolis, MN 55402

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Benny Vicens Rodriguez  
Cynthia Nadine Rodriguez  
42064 Iron Horse Rd.  
Hinckley, MN 55037

Wayne G. Nelson  
Attorney at Law  
5500 Wayzata Blvd., Rm. 1025  
Minneapolis, MN 55416

City-County Federal Credit Union  
c/o Lee W. Mosher, Esq.  
7500 Olson Memorial Hwy., Ste. 150  
Golden Valley, MN 55427

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 1, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Attorney at Law  
6 W. Fifth Street  
Seventh Floor  
St. Paul, MN 55102-1420  
(651) 297-6400  
Attorney Reg. 152262  
(D1720)

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Debtors.

**ORDER TERMINATING STAY**

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This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on September 20, 2004 in Courtroom No. 228B, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Southwest Quarter of Northwest Quarter (SW ¼ of NW ¼), Section Thirteen (13), Township Forty-One (41), Range Twenty-One (21), Pine County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Gregory F. Kishel  
Chief Judge of U.S. Bankruptcy Court